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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,262	06/30/2003	Kanako Tanaka	OHS-299/DIV	8291

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EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

101608262

Applicant(s)

Tanaka

Examiner

Hendrickson

Group Art Unit

1159

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 11/24/04
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 19-25, 41-44 is/are pending in the application.
- Of the above claim(s) 44 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 19-25, 41-43 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 19-25, 41-44 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 101/104
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Improper claim 44 is withdrawn from consideration as being a composition and thus in the nonelected group- see the original restriction.

Claims 19-25, 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyata et al. 4351814, alone or in view of 6306494.

Miyata teaches in columns 2, 4 and 5 a hydrotalcite with SiO_3 anion. A sulfate ion can also be chosen. Forming the claimed material from the anions disclosed is an obvious matter of optimization of teachings; In re Boesch 205 USPQ 215. The properties not reported are deemed possessed due to the similarity of the size and composition to what is presently disclosed.

The silicate anion appears to exist in equilibrium (eg. as a dimer or tautomer) with the other silicic acid anion recited and thus is not patentably distinct in that it is expected to inherently be present. Further, the phrase 'silicate anion' in the references suggests all forms thereof. See column 4 of 6306494.

Claims 19-25, 41-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5861133. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim common subject matter, in that the present ions can be selected from the patent claims. Choosing from a disclosure is an obvious matter of optimization; In re Boesch 205 USPQ 215.

Claims 19-25, 41-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6306494. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim common subject matter as explained above.

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Applicant's arguments filed 11/22/04 have been fully considered but they are not persuasive.

The Declaration is not present, and will be considered after-final. The arguments overlook the fact that in the patents, various cations and anions can be chosen from what is listed in the patented claims. Applicant has not shown that the claimed surface area is not possessed by the references; the patents do not exclude the presently claimed area.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.



Stuart Hendrickson
examiner Art Unit 1754